

CALIFORNIA STATE PERSONNEL BOARD MEETING
801 Capitol Mall
Sacramento, California

www.spb.ca.gov

Public Session Location - Room 150
Closed Session Location - Room 141

MID-MONTH BOARD MEETING MINUTES

NOVEMBER 14, 2000

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

1. ROLL CALL

BOARD MEMBERS PRESENT:

Florence Bos, President
Ron Alvarado, Vice President
Richard Carpenter, Member

2. REPORT OF THE EXECUTIVE OFFICER Walter Vaughn

The Board was advised of the following:

- A. Proposition 35 (Engineering and Architectural initiative) was approved by the voters. State Personnel Board staff will be working with departments to determine the impact of the initiative.
- B. The Executive Officer and staff represented the State Personnel Board at the annual Conference of Disabled in State Service.
- C. The State Personnel Board will establish a "Policy Division" to focus attention to this area. The

selection process for the chief of this division will be initiated in December 2000.

- D. Staff of the Department of Finance is supportive of expanding services in the State Personnel Board's Southern California office.

New Business

- A. State Personnel Board staff was directed to provide for a Board member to participate in the annual National Association of Civil Service Commissioners meeting next year.

3. REPORT OF THE CHIEF COUNSEL - Elise Rose

The Chief Counsel reported on:

- A. Edgerton v. State Personnel Board (SPB)/Department of Transportation (Caltrans) - Caltrans has filed a petition for review with the California Supreme Court to challenge the Court of Appeal decision finding that results of the drug test were inadmissible because the Department had not proven up the internal chain of custody for the laboratory testing of samples.
- B. Guichard v. State Personnel Board (SPB)/Department of Corrections (CDC) - Superior Court denied petition for writ of mandate in which petitioner sought a writ to compel SPB to grant him a full evidentiary hearing on his withhold case. Court found he was only entitled to a truncated hearing per Rule 53.
- C. Senner V. State Personnel Board (SPB)/Department of Corrections (CDC) - Superior Court denied petition for writ of mandate in this case in which SPB issued a decision sustaining dismissal of petitioner for numerous incidents involving sexual comments to subordinates. Petitioner had alleged due process violation based on alleged deficient notice of adverse action that he contended was not detailed enough in its allegations.

4. REPORT ON LEGISLATION - Judy Balmain

The Board was advised of the following:

- A. Walter Vaughn, Linda Brooks and Judy Balmain met with the State and Consumer Services Agency to discuss the State Personnel Board's 2001 proposed legislative package. Meetings will now be scheduled to seek input from the parties that may be impacted by these proposals.

5. SAMPLE OPTIONS LETTER

The Board will discuss and vote on the adoption of a resolution that encourages the use of a sample Options Letter, developed by the Disability Task Force, to be used in an effort to resolve work-related medical issues.

Persons Participating:

Karen Brandt, Senior Staff Counsel, California State Personnel Board

ACTION: On November 14, 2000 Board adopted resolution. (See pages 20-30).

VOTE: Bos, Alvarado, Carpenter - Aye.

BOARD ACTIONS

6. STATE PERSONNEL BOARD SUMMARY MINUTES OF NOVEMBER 1, 2000

ACTION: Adopted on November 14, 2000.

VOTE: Bos, Alvarado, Carpenter - Aye.

7. ACTION ON SUBMITTED ITEMS

ACTION: (See pages 14-15)

8. ADMINISTRATIVE LAW JUDGE CASES

On November 14, 2000, the Board adopted the following decisions presented by Elise Rose, Chief Counsel, California State Personnel Board.

VOTE: Bos, Alvarado, Carpenter - Aye.

REJECTED AND REMANDED DECISION

HOLLY A. HOFFMAN, CASE NO. 99-0111P
Appeal from 3 days suspension
Department of Justice
ACTION: Suspension sustained

COURT REMAND DECISION

LOURDES GERONIMO, CASE NO. 97-2368
Appeal from dismissal
Department of developmental Services
ACTION: Board adopted resolution and decision following
the court remand sustaining the dismissal.

PROPOSED DECISIONS

EUGENE "GREGG" CHIN, CASE NO. 00-0413
Appeal from Dismissal
Department of Transportation
ACTION: Demotion sustained

ROSE C. ABEYTA, CASE NO. 00-0455
Appeal from Dismissal
Department of Corrections
ACTION: Dismissal modified to 11 months suspension

ARACELLI C. CARBONELL CASE NOS. 00-0926 AND 00-1314
Appeal from Official Reprimand and 57 Days Suspension
Public Utilities Commission
ACTION: Official reprimand and 57 days suspension
sustained

DARRYL HOLMES, CASE NO. 00-1209
Appeal from Dismissal
Department of Corrections
ACTION: Dismissal sustained

JOHN P. MCCREADY, CASE NO. 00-2179
Appeal from Back Pay
Department of Youth Authority
ACTION: Entitled to gross back pay

CYNTHIA JONES-BELCHAM, CASE No. 00-2355
Appeal from Non-Punitive Termination
Department of Developmental Services
ACTION: Non-punitive termination sustained

CAROL SWEARINGEN, CASE NO. 99-3874
Appeal from 30 Calendar Days Suspension and Demotion
Department of Corrections
ACTION: 30-calendar day's suspension and demotion
modified to official reprimand

THELMA BEASLEY, CASE NO. 00-0631
Appeal from Demotion
Department of Mental Health
ACTION: Demotion sustained

PAULA M. ANDERSON, CASE NO. 99-3914
Appeal from Dismissal
Department of the Youth Authority
ACTION: Dismissal modified to 14 months suspension

DANIEL L. MARTIN, JR., CASE NO. 00-1474
Appeal from Dismissal
Employment Development Department
ACTION: Dismissal sustained

RICHARD SIEGEL, CASE No. 99-4229
Appeal from Demotion
Department of Transportation
ACTION: Demotion sustained

JOAN LE LOUPE-DEFELICE, CASE NO. 00-1231
Appeal from Termination of Limited Term Appointment (TAU)
Department of Corrections
ACTION: Administrative Law Judge's proposed decision
rejected by Board. Board to decide case itself.

SHAVON M. GLOVER, CASE NO. 00-1033
Termination with fault
Department of General Services
ACTION: Termination modified to termination without
fault

PETITION FOR REHEARING

STEVE GONZALEZ, CASE NO. 00-0727P

Appeal from dismissal

Department of Corrections

ACTION: Petition for rehearing filed by appellant denied

9. RESOLUTION RE NOTICE OF GOVERNMENT CODE SECTION 18671.1
EXTENSION.

ACTION: (See pages 16-19)

10. MISCELLANEOUS APPEALS DIVISION CASES

Withholds, Voided Appointments, Rule 211 Appeals,
Petitions for Rehearing)

On November 14, 2000, the Board adopted the following
decisions presented by Linda Brooks, Assistant Executive
Officer, California State Personnel Board.

VOTE: Bos, Alvarado, Carpenter - Aye.

RULE 211

- A. JULIUS ENGEL, CASE NO. 00-1198

Classification: Deputy Attorney General
State Personnel Board

ACTION: DENIED

WITHHOLD FROM CERTIFICATION

- B. SANTIAGO D. ASPIRAS, CASE NO. 00-1883

Classification: Hospital Peace Officer I
State Personnel Board

ACTION: GRANTED

- C. ANDREW R. TROJANEK, CASE NO. 00-2267

Classification: Cadet, CHP
California Highway Patrol

ACTION: GRANTED

- D. JASON THOMPSON, CASE NO. 00-1720

Classification: Correctional Officer
Department of Corrections
ACTION: GRANTED

- E. KEVIN BROPHY, CASE NO. 00-2257
Classification: Youth Correctional Counselor
Department of the Youth Authority
ACTION: DENIED
- F. EMMANUEL A. GIANNIOS, CASE NO. 00-2316
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED
- G. CAMETRIA R. HALL, CASE NO. 00-2063
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED
- H. RAFAEL HIPOLITO, CASE NO. 00-2001
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED
- I. BRANDON KOLACZKY, CASE NO. 00-2127
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED
- J. RONALD J. MARTINEZ, CASE NO. 00-2314
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED
- K. JERRY RODRIGUEZ, CASE NO. 00-2264
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED
- L. STEVEN M. SIMONEK, CASE NO. 00-2262
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

- M. FABIAN CISNEROS, CASE NO. 00-0630
Classification: Youth Correctional Officer
Department of the Youth Authority
ACTION: DENIED
 - N. BRIAN T. WILSON, CASE NO. 00-2160
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED
 - O. ADRIAN T. WATTS, CASE NO. 00-1092
Classification: Medical Technical Assist, CF
Department of Corrections
ACTION: DENIED
 - P. STEPHEN FEDELE, CASE NO. 99-4698
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED
 - Q. FRANK CASTRO, CASE NO. 99-4595
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED
11. MEDICAL APPEALS
- On November 14, 2000, the Board adopted the following decisions presented by Linda Brooks, Assistant Executive Officer, California State Personnel Board.
- VOTE: Bos, Alvarado, Carpenter - Aye.
- A. SHAUNA MARQUEZ, CASE NO. 00-1060
Classification: Correctional Officer
State Personnel Board
ACTION: GRANTED
 - B. MONIQUE AUDIAT, CASE NO. 00-2627
Classification: Youth Correctional Officer
Department of the Youth Authority
ACTION: DISMISSED

- C. GAUTAM SARKAR, CASE NO. 00-2150
Classification: Youth Correctional Officer
Department of the Youth Authority
ACTION: GRANTED
- D. GEORGE IBARRA, CASE NO. 00-0071
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED
- E. RUBEN ROBLES, CASE NO. 00-3005
Classification: Correctional Officer
State Personnel Board
ACTION: GRANTED
- F. CRYSTAL BUTLER, CASE NO. 00-1608
Classification: Youth Correctional Counselor
Department of the Youth Authority
ACTION: DISMISSED
- G. GUILLEN STEPHEN, CASE NO. 00-2634
Classification: Psychiatric Tech Trainee
Department of Developmental Services
ACTION: DISMISSED
- H. JOAN KEEL, CASE NO. 00-2882
Classification: Sr. Medical Transcriber
Department of the Youth Authority
ACTION: DISMISSED
- I. EMEKA MADUAKO, CASE NO. 00-1371
Classification: Youth Correctional Officer
Department of the Youth Authority
ACTION: DISMISSED
- J. IAN PINKHAM, CASE NO. 00-1334
Classification: Cadet, CHP
California Highway Patrol
ACTION: DISMISSED

12. NON-HEARING CALENDAR

On November 14, 2000, the Board adopted items A-B. These items were presented by Laura Aguilera, Chief, Personnel

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Resources and Innovations Division, California State Personnel Board.

VOTE: Bos, Alvarado, Carpenter - Aye.

A. PRINCIPAL CALTRANS ADMINISTRATOR

The Department of Transportation proposes to re-establish the class of Principal Caltrans Administrator with a 12-month probationary period.

B. INSURANCE POLICY OFFICER

ASSOCIATE INSURANCE POLICY OFFICER

SENIOR INSURANCE POLICY OFFICER

SUPERVISING INSURANCE POLICY OFFICER

BUREAU CHIEF, CONSUMER POLICY ISSUES, DEPARTMENT OF INSURANCE

SENIOR INSURANCE COMPLIANCE OFFICER (SPECIALIST), DEPARTMENT OF INSURANCE

SENIOR INSURANCE COMPLIANCE OFFICER (SUPERVISOR), DEPARTMENT OF INSURANCE

The Department of Insurance proposes to retitle the existing classes of Insurance Policy Officer; Associate Insurance Policy Officer; Senior Insurance Policy Officer; Supervising Insurance Policy Officer; and Bureau Chief, Consumer Policy Issues, Department of Insurance; to establish the class of Senior Insurance

Compliance Officer (Specialist), Department of Insurance with a 12-month probationary period; to revise Alternate Range Criteria 239; and to designate that Footnote 24 be applied to the class of Senior Insurance Compliance Officer (Supervisor).

13. STAFF CALENDAR ITEMS FOR BOARD INFORMATION

The staff has approved the following actions:

- A. ADMINISTRATOR, INDUSTRIAL EDUCATION PROGRAM, CMSI
ADMINISTRATOR, SCIENCE PROGRAM, CMSI
DEPUTY DIRECTOR, EDUCATIONAL PROGRAMS, CMSI, CEA
DIRECTOR OF DEVELOPMENT, CMSI
MANAGER OF EXHIBIT SERVICES

The California Science Center (CSC) and the Department of Personnel Administration (DPA) propose title changes and related changes within the specifications for the following managerial designated classes: Administrator, Industrial Education Program, CMSI; Administrator, Science Program, CMSI; Deputy Director, Educational Programs, CMSI, CEA; Director of Development, CMSI; and Manager of Exhibit Services; and to designate Footnote 41 to the Director of Development.

ACTION: Noted

14. CAREER EXECUTIVE ASSIGNMENT (CEA) CATEGORY ACTIVITY

A. REQUESTS TO ESTABLISH NEW CEA POSITIONS CURRENTLY UNDER CONSIDERATION

(1) ASSISTANT DEPUTY DIRECTOR, CHILDREN AND FAMILY SERVICES DIVISION

The Department of Social Services proposes to allocate the above position to the CEA category.

The Assistant Deputy Director will advise and assist in the formulation, implementation and administration of California Department of Social Services (CDSS) programs, policies and procedures and will assist in providing overall direction to the Children and Family Services Division of the CDSS. The department indicates that the position will be at the second organizational level and will report to the director.

(2) ASSISTANT DIRECTOR OFFICE OF TECHNOLOGY ASSESSMENT, PLANNING AND DEVELOPMENT

The Department of Conservation proposes to allocate the above position to the CEA category.

The Assistant Director services as a member of the Director's executive staff and advises the Director and executive staff regarding appropriate data technology strategies to address mandates and customer requirements, including the Department's Geographic Information Systems. The department indicates that the position will be at the second

organizational level and will report to the director.

(3) DEPUTY GENERAL COUNSEL, COMMUNITY CARE LICENSING ENFORCEMENT PROGRAM

The Deputy General Counsel, Community Care Licensing Enforcement Program oversees the operation of the Community Care Licensing Enforcement Unit consisting of four sections, each of which is headed by an Assistant General Counsel responsible for carrying out the Community Care Licensing Enforcement Program for one of the four regions statewide. The department indicates that the position will be at the third organizational level and will report to the General Counsel/Deputy Director.

(4) ECOSYSTEM RESTORATION PROGRAM MANAGER, CALFED BAY-DELTA PROGRAM

The Department of Water Resources' Ecosystem Restoration Program Manager is responsible for planning, managing, directing, and coordinating the CALFED Bay-Delta Program's ecosystem planning and implementation efforts. The ecosystem restoration effort is the largest in the Nation. The department indicates that the position will be at the third organizational level and will report to the Deputy Director, CALFED Bay-Delta Program.

(5) WATER MANAGEMENT PROGRAM MANAGER, CALFED BAY-DELTA PROGRAM

The Department of Water Resources' Water Management Program Manager is responsible for providing statewide program direction, oversight, and coordination of the CALFED Bay-Delta Program's Water Management Strategy, including the Storage, Water Use Efficiency, and Water Transfers Programs. CALFED's water management effort is designed to increase water supply reliability for 22 million Californians. The department indicates that the position will be at the third organizational level and will report to the Deputy Director, CALFED Bay-Delta Program.

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B. EXECUTIVE OFFICER DECISIONS REGARDING REQUESTS TO ESTABLISH NEW CEA POSITIONS

(1) PROGRAM MANAGER, ENERGY CONSERVATION

The Department of General Services request to allocate the above position to the CEA category has been approved effective October 18, 2000.

C. REQUESTS TO REFILL CEA POSITIONS ESTABLISHED BETWEEN 6/30/95 AND 1/1/99

(1) ASSISTANT CHIEF COUNSEL

The Department of Health Services is requesting to refill the above position.

(2) CHIEF, FINANCIAL SERVICES BRANCH

The Department of Motor Vehicles is requesting to refill the above position.

(3) DEPUTY DIRECTOR, ADMINISTRATIVE SERVICES

The Department of Community Services and Development is requesting to refill the above position.

(4) SPECIAL ASSISTANT STATE AUDITOR

The Bureau of State Audits is requesting to refill the above position.

(5) SOUTHERN MARINE MANAGER

The Department of Fish and Game is requesting to refill the above position.

D. EXECUTIVE OFFICER DECISIONS REGARDING REQUESTS TO REFILL CEA POSITIONS ESTABLISHED BETWEEN 6/30/95 AND 1/1/99

(1) DEPUTY EXECUTIVE OFFICER, QUALITY ASSURANCE AND REVENUE RECOVERY DIVISION

The Board of Control's request to refill the above position has been approved effective October 18, 2000.

ACTION: Noted

15. WRITTEN STAFF REPORT FOR BOARD INFORMATION

WHISTLEBLOWER ANNUAL REPORT TO THE GOVERNOR AND THE
LEGISLATURE

ACTION: Report Noted

A D J O U R N M E N T

SUBMITTED

1. M. BRENT EDWARDS, CASE NO. 99-4422. Appeal from constructive termination. Department of Mental Health. (Oral argument held September 6, 2000).

NO ACTION

2. GABRIEL HERNANDEZ, CASE NO. 98-2868. Appeal from dismissal. Department of Mental Health. (Oral argument held September 6, 2000).

NO ACTION

3. WILLIAM SULLIVAN, CASE NO. 99-3904. Appeal from dismissal. Department of Corrections. (Oral argument held September 6, 2000).

NO ACTION

4. CHRISTOPHER RAMOS, CASE NO. 99-0458P. Appeal from 5 percent reduction in salary for 6 months. Department of Corrections. (Oral argument held September 6, 2000).

ACTION: On November 14, 2000, adopted Board decision sustaining 5 percent reduction in salary for 6 months.
VOTE: Bos, Alvarado, Carpenter - Aye.

5. REGINALD SMITH, CASE NO. 00-0312. Appeal from 30-calendar day's suspension. Department of Corrections. (Oral argument held October 3, 2000).

NO ACTION

6. DALE WATKINS, CASE NO. 99-1548. Appeal from demotion. Department of Fish and Game. (Oral argument held November 1, 2000).

NO ACTION

7. DIANA HENNING, CASE NO. 98-4118/99-0772. Appeal from official reprimand/medical termination, demotion and transfer. Department of Corrections. (Oral argument held November 1, 2000).

NO ACTION

NOTICE OF GOVERNMENT CODE § 18671.1 RESOLUTION

Since Government Code section 18671.1 requires that cases pending before State Personnel Board Administrative Law Judges (ALJ's) be completed within six months or no later than 90 days after submission of a case, whichever is first, absent the publication of substantial reasons for needing an additional forty-five days, the Board hereby publishes its substantial reasons for the need for the forty-five day extension for some of the cases now pending before it for decision.

An additional forty-five days may be required in cases that require multiple days of hearings, that have been delayed by unusual circumstances, or that involve any delay generated by either party (including, but not limited to, submission of written briefs, requests for settlement conferences, continuances, discovery disputes, pre-hearing motions). In such cases, six months may be inadequate for the ALJ to hear the entire case, prepare a proposed decision containing the detailed factual and legal analysis required by law, and for the State Personnel Board to review the decision and adopt, modify or reject the proposed decision within the time limitations of the statute.

Therefore, at its next meeting, the Board will issue the attached resolution extending the time limitation by 45 days for all cases that meet the above criteria, and that have been before the Board for less than 6 months as of the date of the Board meeting.

GOVERNMENT CODE § 18671.1 RESOLUTION

WHEREAS, Section 18671.1 provides that, absent waiver by the appellant, the time period in which the Board must render its decision on a petition pending before it shall not exceed six months from the date the petition was filed or 90 days from the date of submission; and

WHEREAS, Section 18671.1 also provides for an extension of the time limitations by 45 additional days if the Board publishes substantial reasons for the need for the extension in its calendar prior to the conclusion of the six-month period; and

WHEREAS, the Agenda for the instant Board meeting included an item titled "Notice of Government Code § 18671.1 Resolution" which sets forth substantial reasons for utilizing that 45-day extension to extend the time to decide particular cases pending before the Board;

WHEREAS, there are currently pending before the Board cases that have required multiple days of hearing and/or that have been delayed by unusual circumstances or by acts or omissions of the parties themselves;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the time limitations set forth in Government Code section 18671.1 are hereby extended an additional 45 days for all cases that have required multiple days of hearing or that have been delayed by acts or omissions of the parties or by unusual circumstances and that have been pending before the Board for less than six months as of the date this resolution is adopted.

* * * * *

I hereby certify that the State Personnel Board made and adopted the preceding resolution at its meeting on November 14, 2000.

WALTER VAUGHN
Executive Officer
California State Personnel Board

VOTE: Bos, Alvarado, Carpenter - Aye.

SAMPLE OPTIONS RESOLUTION AND LETTER (See page 3)

WHEREAS, the law requires that an appointing power must make a reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee who is an individual with a disability, unless the appointing power can demonstrate that the accommodation would impose an undue hardship on the operation of its program;

WHEREAS, in accordance with existing law, in order to determine whether an employee is entitled to a reasonable accommodation and, if so, what sort of reasonable accommodation would be appropriate, an appointing power must engage in a flexible, interactive process with the employee and/or the employee's representative;

WHEREAS, in accordance with Government Code § 19253.5, an appointing power may take medical action with respect to an employee who cannot perform the duties of his or her current position;

WHEREAS, pursuant to precedential decisions issued by the State Personnel Board (SPB or Board), an appointing power is strongly encouraged to engage in a flexible, interactive process before initiating a medical action under Government Code § 19253.5;

WHEREAS, the Board has reviewed appeals in constructive medical termination, disability discrimination and denial of reasonable accommodation cases in which appointing powers have sent employees inappropriate options letters that either failed to apprise employees of all the available options or discouraged employees from engaging in an interactive process;

WHEREAS, a Disability Task Force, consisting of representatives of the departments and employee organizations listed on Attachment 1, has drafted a sample Options Letter, a copy of which is attached hereto as Attachment 2, which can be used by an appointing power to apprise an employee, who appears to have a medical condition that impairs that employee's ability to perform the duties of his or her position, of the various options available to the employee, and to invite the employee to engage in an interactive process to develop an appropriate plan to resolve the employee's work-related medical issues;

WHEREAS, the attached sample Options Letter can be modified by an appointing power to fit the particular medical and reasonable accommodations issues that may exist in each individual case;

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WHEREAS, by encouraging the use of the sample Options Letter, the Board is not interpreting existing law, modifying the Board's precedential decisions, or prejudging any case that may come before it;

WHEREAS, for appointing powers and employees who would like assistance when engaging in the interactive process, the Board offers mediation services through its State Employee Mediation Program, in which the participants may engage in confidential discussions with the help of an impartial, trained mediator who will assist the appointing power and the employee in finding a mutually acceptable resolution of reasonable accommodation and other medical/employment issues;

WHEREAS, the Board strongly encourages appointing powers to inform employees with medical conditions that may impair their ability to perform their job duties of their available options in a non-adversarial Options Letter, to engage in a flexible interactive process with employees to resolve medical/employment issues, and to utilize the Board's mediation services to facilitate such a process where the parties agree that mediation would assist them in resolving medical/employment issues;

BE IT THEREFORE RESOLVED that the State Personnel Board encourages the use of the attached sample Options Letter to initiate a flexible, non-adversarial interactive process with employees with medical conditions that impair their ability to perform their job duties.

* * * * *

The foregoing resolution was made and adopted by the State Personnel Board at its meeting on November 14, 2000, as reflected in the record of the meeting and Board minutes.

Disability Task Force Participants¹

California Association of Highway Patrolmen (CAHP)
California Correctional Peace Officers Association (CCPOA)
California Public Employees' Retirement System (PERS)
California State Employees Association (CSEA)
California Union of Safety Employees (CAUSE)
Department of Corrections (CDC)
Department of Industrial Relations (DIR)
Department of Mental Health (DMH)
Department of Fair Employment and Housing (DFEH)
Department of Personnel Administration (DPA)
State Compensation Insurance Fund (SCIF)
State Personnel Board (SPB)

¹ By including departments and employee organizations on the list of task force participants, the State Personnel Board is making no representations as to whether any of these participants has endorsed the use of the sample Options Letter.

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MODEL OPTIONS/CONTACT LETTER

Name
Address
Address

Re:

Dear Mr./Ms.

The Department is in receipt of the [DATE] medical report of [DOCTOR'S NAME] which indicates that you are unable to perform the duties of your current position, [JOB TITLE], with this department. Therefore the following information is being provided for you to let you know of the various options which may be available to you. We invite you to engage with us in an interactive process to begin to develop an appropriate plan for resolving the issues raised in this report.

PLEASE CONTACT ME BY [DATE] TO SET UP A MEETING TO DISCUSS THESE OPTIONS. A FAILURE TO DO SO MAY RESULT IN THE DEPARTMENT SELECTING AN OPTION FOR YOU.

1. Return to Work

- a. Full duty: You may be able to return to work as a [JOB TITLE] performing full duty with no restrictions, if you provide a full medical release, in writing, from your treating physician. This medical release must be provided prior to your return to work.
- b. Reasonable Accommodation: If you believe that you are disabled and that a reasonable accommodation would enable you to perform the essential functions of your current position/classification or of another classification, for which you meet the minimum qualifications, you may request a reasonable accommodation. If you are qualified and would like to pursue an alternate placement to another classification, a list of current job vacancies will be provided to you. You may indicate which positions you are interested in and you will be given an opportunity to demonstrate your qualifications for those positions.

This option may be effectuated through a medical transfer/demotion pursuant to Government Code section 19253.5.

- c. Medical Transfer/Demotion: If you are unable to perform the work of your current position, but are able to perform the work of another position in the Department, you may be able to medically transfer or medically demote to such a position. If at a later date you are no longer incapacitated for duty in your original position, under most circumstances, you would have a mandatory right to reinstatement to that classification or an equivalent classification. This option is available through the provisions of Government Code section 19253.5.

2. Temporary Leave

- a. Family Medical Leave Act (FMLA)/California Family Rights Act (CFRA): If you qualify, you may request a leave of absence under either of these statutes. Both allow qualified employees to take up to 12 weeks of unpaid leave each year when they, or a qualified family member, have a serious health condition. You may be able to utilize existing leave credits. These statutes require that the employer maintain an employee's health, dental and vision coverage during such leave.
- b. Pregnancy Disability Leave: If you are unable to perform in your current position due to a disability related to pregnancy, you may be entitled to unpaid leave. Accrued leave credits may be available to supplement this leave.
- c. Medical Leave of Absence: You may request an unpaid medical leave of absence for up to one year. Under this option, the employer is not required to maintain an employee's health, dental and vision coverage. You may choose to pay for these benefits yourself.
- d. Leave Balances: You may be able to utilize existing leave balances, including a request for catastrophic leave.
- e. Temporary Assignment: A temporary assignment or loan of employees within an agency or between agencies not to exceed two years may be available to

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facilitate your return to work. You would have a mandatory right to return to your former position should this option be exercised.

- f. Non-Industrial Disability Insurance (NDI): If you have a non-industrial health condition, or a denied Workers' Compensation claim, which prevents you from working you may be entitled to NDI benefits. The NDI benefit is administered by the Employment Development Department (EDD). Your doctor must provide medical substantiation of your health condition in order for EDD to determine your eligibility for NDI benefits. While on NDI, health, dental, and vision benefits are covered.
- g. Temporary Total Disability/Industrial Disability Leave/Vocational Rehabilitation: If you are industrially injured you may be entitled to Temporary Total Disability benefits, Industrial Disability Leave benefits, or if eligible and approved as a Qualified Injured Worker in a Workers' Compensation case, Vocational Rehabilitation (VR) benefits. The VR benefit is administered through the State Compensation Insurance Fund (SCIF). Continuation of health care benefits may be available. To determine your eligibility, please contact the SCIF VR coordinator or your Workers' Compensation attorney.

3. Separation from State Service

- a. Disability Retirement: If you are unable to return to work due to your health condition, you may apply for disability retirement with CalPERS. Disability retirement is considered a temporary separation from state service. Health benefits are available through CalPERS while you are on retirement status. If, after you are approved for disability retirement and, at a later date, it is determined that you are able to return to work as a [JOB TITLE], you will have mandatory rights to reinstatement to [JOB TITLE].

While you await the determination of your disability retirement application from CalPERS, you may use your existing leave credits, request FMLA/CFRA leave, or request a medical leave of absence. If you are eligible you may also apply for service

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retirement pending approval of your disability retirement.

- b. Service Retirement: If you are eligible, you may apply for service retirement with CalPERS. A service retirement is a permanent separation from state service. Health benefits are available through CalPERS while you are on retirement. You would retain permissive reinstatement rights to state service.
- c. Voluntary Resignation: You may choose to voluntarily resign from state service. You will retain permissive reinstatement rights. You may be able to purchase health, dental and vision benefits.

These options may not include all available legal options. If you have any other options that you would like to discuss, please let me know. During our meeting, you may also request mediation through the State Personnel Board's State Employee Mediation Program. If we agree to mediate, the issues will be discussed in a confidential forum and an impartial, trained mediator will assist us in finding a mutually acceptable resolution.

If you do not respond to this letter or we are unable to reach a resolution, we may pursue one of the following options.

- 1. If you are able to work in an alternate classification, we may medically transfer or demote you to a currently vacant position for which you meet the minimum qualifications. We will make an effort to place you in the highest paying vacant position for which you are qualified, which is not promotional and which meets your medical restrictions.
- 2. If you are unable to perform the work of your present position and no position is available to which you could be medically transferred or demoted, we may pursue one of the following options.
 - a. Disability Retirement: If you have not pursued disability retirement but are eligible to apply, we may file on your behalf. While the application is pending, you may utilize your existing leave credits until exhausted. If you exhaust all of your leave credits prior to CalPERS determination, you will be paid by the Department an interim disability

allowance equal to the estimated amount of the disability retirement benefit to which you would be entitled. Should CalPERS grant the disability retirement application, you would begin to receive the disability retirement allotment directly from CalPERS.

If the disability retirement application is denied, you have a right to return to work, with backpay, less the interim disability allowance received during the pendency of the application.

- b. Medical Termination: If you are not entitled to disability retirement or you waive your right to file for disability retirement, we may medically terminate you pursuant to Government Code section 19253.5.

We have attached a check sheet for you to indicate which options you would like to discuss when we meet. Please fill it out and return it to me prior to our meeting so that I might be prepared to discuss those particular issues with you. You may check all options that you are interested in.

IF WE DO NOT HEAR FROM YOU BY [DATE], THE DEPARTMENT MAY BE PURSUING ITS OPTIONS, AS OUTLINED ABOVE, WITHOUT YOUR INPUT.

Sincerely,

Name
Phone number

cc:

November 14, 2000

OPTION DISCUSSION CHECKLIST

Name

THE FOLLOWING IS A LIST OF POSSIBLE OPTIONS. PLEASE CHECK AS MANY AS YOU WOULD LIKE TO DISCUSS.

- ☐ Return to work, with or without a reasonable accommodation
- ☐ Medical transfer/demotion to another classification
- ☐ Family Medical Leave/California Family Leave
- ☐ Pregnancy Disability Leave
- ☐ Medical Leave of Absence
- ☐ Use existing leave balance
- ☐ Temporary reassignment
- ☐ Non-industrial Disability leave (NDI)
- ☐ Temporary Disability/Industrial Disability Leave (IDL)/Vocational Rehabilitation
- ☐ Disability Retirement
- ☐ Service Retirement
- ☐ Voluntary resignation
- ☐ SPB's State Employee Mediation Program

THE FOLLOWING DATES WOULD BE CONVENIENT FOR A MEETING. PLEASE CHECK ALL THAT WOULD BE AVAILABLE.

- ☐ (DATE)
- ☐ (DATE)
- ☐ (DATE)
- ☐ (DATE)

PLEASE RETURN IN ENCLOSED STAMPED ENVELOPE AS SOON AS POSSIBLE.

